

FINAL STATEMENT OF REASONS

Title 9, California Code of Regulations, Sections 9795 through 9886
Programs for Alcohol and Drug Impaired Drivers

RN 01-11

UPDATE OF INTIAL STATEMENT OF REASONS PURPOSE AND NECESSITY OF EACH REGULATORY CHANGE

The Department of Alcohol and Drug Programs (ADP) is amending regulations concerning Programs for Alcohol and Drug Impaired Drivers contained in Chapter 3 (commencing with section 9795), Division 4, title 9, of the California Code of Regulations. These regulations will implement, interpret, and make specific Health and Safety Code sections 11837(c)(2), 11837(e), and 11837.4, Vehicle Code sections 23540 and 23542, and Penal Code sections 191.5 and 192(c)(3). In addition, these changes are necessary to simplify administrative procedures for Driving Under the Influence (DUI) programs and to improve clarity, consistency, and continuity throughout.

This regulatory action arises from the 2005 passage of Assembly Bill 1353 amending Health and Safety Code section 11837(e), 2007 amendments to the Vehicle Code and Penal Code, and various policy changes supported by the DUI Advisory Workgroup. The specific purpose of each amendment of the proposed text and the rationale supporting the ADP's determination that each amendment is reasonably necessary to carry out the purpose for which the amendment is proposed as follows:

Proposed amended 9 CCR § 9795. Application and Purpose of Regulations.

The term "drinking driver" was replaced by the term "Driving Under the Influence"(DUI) to maintain consistency throughout Chapter 3.

Proposed amended 9 CCR § 9800. Definitions.

This proposed regulation modifies section 9800(a)(19) to comport with the modifications to Vehicle Code section 23540 which became effective September 20, 2005, and Penal Code section 191.5 which became effective January 1, 2007.

The definition of "Multiple Offender" was modified to reflect changes in Vehicle Code section 23103 and Penal Code section 191.5.

The definition of "Significant Other" was added to comport with Health and Safety Code section 11837(e).

The definition of “Working Days” was added to distinguish from “Days” which are calendar days.

Proposed amended 9 CCR § 9801.5. County Responsibilities.

This text was modified to reflect the new title for the County Administrator which is the “County alcohol and drug program administrator.” These changes also affect 9 CCR § 9816. “Drinking driver” has been changed to “Driving Under the Influence” (DUI) and DUI replaces all references to drinking driver and to drinking driver programs. These changes affect 9 CCR § 9801.6; § 9812, § 9838, §9852, §9862, § 9876, §9795, §9800, §9801.5, and § 9816.

Proposed amended 9 CCR § 9804. Content of Application.

The term “three month” has been modified to “first offender” as the first offender program also includes a six-month program and a nine-month program.

Proposed amended 9 CCR § 9820. Extension of Period of Licensure.

Corrected section references to the Health and Safety Code.

Proposed amended 9 CCR § 9822. Program Licensing Fees.

Revision necessary to clarify the notification pertaining to licensing fees.

Proposed amended 9 CCR § 9829. Unlicensed Programs.

Revisions are necessary for minor change in reference to a code section, and to identify content of a notice to an unlicensed program. Section 9829(2)(f) is added to emphasize that a participant may not received credit from an unlicensed program.

Proposed amended 9 CCR § 9836. Administrative Review of Licensing Actions.

Simple grammar and zip code corrections.

Proposed amended 9 CCR § 9846(b) Staff Qualifications and Function.

The proposed regulations seek to clarify the staff requirements for various duties which are outlined in sections 9846(c) and 9846(f).

Proposed amended 9 CCR, § 9848. Participant Enrollment.

Clarify existing regulations about the duties assigned to administrative staff versus those assigned to counseling staff. Proposed regulations seek to clarify these duties, allowing the programs to utilize clerical staff for those tasks that do not specify AOD counseling requirements, and to better utilize resources.

Proposed amended 9 CCR § 9849. Assessment of Participant's Alcohol or Drug Program.

Additional language was added to specify what the assessment consists of in connection with a participant's AOD history. The comprehensive assessment is necessary to identify potential needs of a participant beyond the services of the DUI program.

Proposed amended 9 CCR § 9851. Program Services to be Provided.

Revisions are necessary to clarify the time frame for the assessment process and maintain consistency with amendments to Health and Safety Code section 11837(c)(2) and several amendments pertaining to Health and Safety Code section 11837.4.

Proposed amended 9 CCR § 9852. Educational Sessions.

Revisions are made to the terms "friend" and "significant other" to maintain consistency with Health and Safety Code § 11837(e). After further consideration, the proposed revisions to limit educational films are deleted to allow for program flexibility.

Proposed amended 9 CCR § 9854. Group Counseling Sessions.

Amendments made to the terms "friend" and "significant other" to maintain consistency with Health and Safety Code § 11837(e).

Proposed amended 9 CCR § 9858. Face-to-face Interviews.

Amendments to this section are to clarify the face-to-face interview process for the six, nine, eighteen, and thirty month programs.

Proposed amended 9 CCR § 9862. Referral to Ancillary Services.

Revisions are necessary to indicate the types of ancillary services to which the licensee may refer the participant.

Proposed amended 9 CCR § 9866. Organization and Maintenance of Participant Records.

Revision is necessary to clarify instructions regarding organization of participant records.

Proposed amended 9 CCR § 9867. Notice of Completion Certificates.

Revisions relate to the use, the procedure, and/or the withholding of these certificates.

Proposed amended 9 CCR § 9868. Proof of Enrollment Certificates.

DMV procedures were modified and these regulations are being made consistent with the DMV procedures.

Proposed amended 9 CCR § 9874. Program Sobriety.

Revisions are necessary to clarify and remove redundant language.

Proposed amended 9 CCR § 9876. Participant Attendance.

Definition of “Period of Enrollment” was added to prevent participants from transferring from one program to another in order to avoid dismissal for excessive absences.

Proposed amended 9 CCR § 9876.5. Leave of Absence.

The County Alcohol and Drug Program Administrator no longer reviews requests for leaves of absence. The language was modified to reflect that the program administrator or the Administrator’s designee will review all such requests.

Proposed amended 9 CCR § 9878. Participant Fees.

Revisions are necessary to improve clarity, monitoring, and accountability.

Proposed amended 9 CCR § 9879. Financial Assessment to Determine Participant's Ability to Pay Program Fees.

Revisions are necessary for clarification of individual and group counseling and fees for program activities during a time of suspension.

Proposed amended 9 CCR § 9884. Interprogram Transfer.

Revisions make clear that the County will not have oversight of transfers but that such oversight is up to the individual DUI program.

Proposed amended 9 CCR § 9886. Dismissal of Participants.

Revisions are necessary to clarify the participant's responsibility.

FISCAL IMPACT STATEMENTS:

Anticipated costs or savings in federal funding to the Federal Government: None. ADP does not anticipate any cost to the federal government as the result of this regulatory action because these regulations do not impact any federally funded State agency or program.

Anticipated costs or savings to any State agency: None.

Anticipated costs to county or local government: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. ADP has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This regulatory action will not impose a cost on business, or eliminate businesses, small businesses, or jobs. The proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

Impact on Small Business: These regulations will impact small businesses, since most DUI programs are small businesses. However, these regulations will not have a detrimental economic impact on small business.

Cost Impact on Representative Private Persons or Businesses: These regulations will not impact individuals receiving services from DUI programs.

Pursuant to Government Code section 11346.2(b)(4), the Department of Alcohol and Drug Programs states that there is no fiscal impact by relying on the fact that there is no fee increase to participants of the programs, to the Department, or to the programs themselves in connection with these proposed regulations. These regulations will allow the AOD programs to use their resources more appropriately to improve their level of service to participants and to the community.

SUMMARY AND RESPONSES TO COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD FROM FEBRUARY 25, 2011 THROUGH APRIL 11, 2011.

The Public Comment period on the proposed text was open for public comment for 45 days from February 25, 2011 through April 11, 2011. The Department of Alcohol and Drug Programs (Department) received eleven comment letters, e-mails, and faxes, two of which were received at the April 11, 2011 public hearing. Together with written and public comments, the Department received a total of 113 comments. Comments made at the public hearing were the same comments presented in written letters. Pursuant to Government Code section 11345.9(a)(3), the Department has summarized and responded to those comments as follows:

COMMENTS No. 1

1A General Comment

Comment 1A: In general, the commenter supports the regulation modifications with the exception of the subsections listed below.

Response: The Department thanks commenter #1 for his support of these regulations.

1B Section 9800 Definitions (12) and (19)

Comment 1B: The commenter suggests that the words “seven years” should be modified to “ten years” to comply with the Vehicle Code section.

Response: Through the strikethrough and underline method, these sections in the proposed regulations indicate that the words “seven years” have already been modified to “ten years” to comply with the applicable Vehicle Code section.

Accommodation: None.

COMMENTS No. 2

2A Section 9846(b)(1) Staff Qualifications and Function

Comment 2A: The commenter supports the modification of the classroom experience educational requirement being modified from two years to one year. However, the commenter states that the one year requirement remains “excessive, unnecessary and works to prevent qualified counselors from presenting DUI education to the detriment of the work force and the public.” The

commenter cites two studies relating to *school counselors* which state that teaching experience is not a vital factor to explain the competence levels of experienced *school counselors*. In addition, the commenter states that as long as a Counselor is a certified counselor pursuant to “Title 9, Division 4, Chapter 8, Section 13005(a)(4), then it should be left to the DUI Program Administrator and the Supervising Counselor to determine if the Counselor possesses the skills necessary to conduct an educational session in a competent manner.”

Response: The Department partially agrees with this comment. After further review of this text and of this comment, the Department has decided not to change the minimum requirement from two years to one year. The Department will also add a sentence to this subsection that will accommodate programs to allow counselors to conduct educational sessions based on their certification status.

Accommodation: The proposed text has been amended further identifying two other sections relating to experience and certification.

2B: Section 9846(b)(2) Staff Qualifications and Function

Comment 2B: The commenter states that regulations adopted by the Department setting forth “requirements for Counselor certification are contained in Title 9, Division 4, Chapter 8, Section 13040” and it is confusing and incongruous to include in Counselor certification regulations one requirement for experience (2,080 hours) but a different and more arduous requirement in these current proposed regulation amendments (2 x 1,776 hours). The commenter contends that persons who meet the current educational and experiential requirements for AOD Counselor certification possess sufficient knowledge and skill to conduct DUI Program counseling sessions in a professional and effective manner. Therefore, the proposed requirement of 3,552 hours is excessive and will make it more difficult to find qualified counselors for the DUI programs.

Response: The Department agrees with this comment because the counselor certification requirements set forth in Title 9, Section 13040 are sufficient for DUI counselors. Additional requirements are not necessary.

Accommodation: This proposed subsection of the text has been deleted.

2C Section 9876(d)(1) Participant Attendance

Comment 2C: Section 9876(d)(1) states that ...”a transfer from one program to another, with no break in enrollment, counts as one period of enrollment” for purposes of determining if a participant has exceeded the allowable absences per period of enrollment. The commenter states it would be preferable if a

participant in a DUI program begins a new program with a clean slate rather than transferring from one program to another. The commenter states that differences in record keeping from one program to another can make it difficult to transfer and determine the number of accrued absences for the transferring participant.

Response: The Department disagrees with this comment. These proposed changes would allow participants who transfer from one program to another to accumulate more absences per enrollment than a participant who does not transfer. The Department maintains that the current proposed text is in the best interest of the public.

Accommodation: None.

2D Section 9878(i) and (i)(1) Participant Fees

Comment 2D: The commenter requests that this section be written more clearly so that a participant's completion certificate can be withheld for the allowed fees in Section 9878(g). Language in the proposed text was stricken in 9878(i) that would allow programs to withhold the certificate for "any additional fees." Instead, the certificate can only be withheld if the "program fees" have not been fully paid. The commenter suggests that since the "additional fees" are part of the contract, these fees should be included as items for which a completion certificate can be withheld, if not paid.

Response: The Department agrees with this comment. A DUI program should have the flexibility to withhold the completion certificate until all the fees are paid.

Accommodation: The Department has reinserted the promulgated language.

2E Section 9800(22) Definitions

Comment 2E: The commenter suggests listing the additional fees in the definition portion of the regulation text that correspond to Section 9878(g).

Response: The Department disagrees as the Additional Fee definition is already listed in Section 9800(a)(1) with a reference to Section 9878.

Accommodation: None.

COMMENTER No. 3

3A Section 9848(d)(1)(A) Participant Enrollment

Comment 3A: The commenter suggests that since counselors are now trained in a motivational interviewing approach, the language in this section of the regulations should be modified to refer to a “consideration of abstinence” in the discussions between counselor and participant during the intake interview. The reasoning is that abstinence as a goal may not be appropriate for a first offender.

Response: The Department maintains that the language as written does not preclude program flexibility when discussing possible abstinence with participants.

Accommodation: None.

3B Section 9848(d)(1)(D) Participant Enrollment

Comment 3B: The commenter suggests that programs, especially larger programs, may wish to utilize other staff besides counselors to complete the intake duties listed in this section. This would free up time for the counselors to perform the comprehensive assessments for the participants among other remaining counselor duties.

Response: The Department disagrees with the above comments. The commenter’s proposed change would conflict with the Department’s Counselor certification requirements in Section 13005(a)(4)(A), which specifically lists “intake” as a function of the counseling services.

Accommodation: None.

3C Section 9862(a) and (b) Ancillary Services

Comment 3C: The commenter suggests that there should be additional language inserted when referring participants to a hospital for physical or mental health. The regulations state such referrals are voluntary. The commenter suggests inserting “unless the client presents with acute signs/symptoms that must be evaluated to ensure the well-being of the client.” The commenter states that the regulations need language that will allow programs to require clinical evaluation in order for the clients to resume program activities as well as language that would allow the programs to return a client to the court when concerned about client safety or safety of others.

Response: The Department disagrees with this comment since Section 9862(e) already describes a method to be used for exceptions to voluntary referrals to ancillary services. In addition, Section 9886(a)(8) addresses those participants who act in a threatening manner and who may be dismissed from the program.

Accommodation: None.

3D Section 9862(e) Referral to Ancillary Services

Comment 3D: The commenter states that it is impractical to require voluntary referrals to ancillary services on an individual basis with the approval of the County Alcohol Program Administrator. The commenter states that she has a clinical team that recommends ancillary services and they keep the information available for the County Administrator. The DUI program does not call each time they need to make a referral.

Response: The Department disagrees with this comment because it maintains that for non-voluntary referrals to ancillary services, the current procedures are sufficient as outlined in Section 9862(e).

Accommodation: None.

3E Section 9876 (d)(1) and (d)(2) Participant Attendance

Comment 3E: The commenter states that DUI programs throughout the state have invested in software that track client absences. The software was written to track absences beginning with a clean slate. Often, a participant will transfer from another program with a clean slate, i.e. no absences. Since it is her experience that participants do not abuse the transfer process, the Department should not require that absences from the former program transfer with the participant to the new program.

Response: The Department disagrees with this comment. The amended language is intended to clarify “period of enrollment” for the purpose of monitoring participant attendance, including absences. Language was added addressing transfers in order to maintain consistency with the attendance requirements of this section. The language proposed by the commenter would allow a transferring participant to accumulate more absences per enrollment than a participant who does not transfer and would not be consistent with the attendance requirements set forth in this section.

Accommodation: None.

COMMENTER No. 4

4A Section 9878(f)(1)(C) Participant Fees

Comment 4A: The commenter states she currently charges \$10 for reinstatement, transfer, leave of absence fees, and \$5 for monthly program fees and reschedule fees. The proposed regulations are modified to state that \$5 a month, \$5 for reschedule, \$5 to process a transfer and reinstatement fee was deleted. The commenter believes there should be no changes to the regulations in this area and she is unclear as to the meaning and purpose of the changes.

Response: The Department agrees with this comment that the text regarding the current participant fees should remain as currently promulgated since these fees are necessary for programs to receive partial reimbursement for services rendered during the reinstatement process.

Accommodation: The promulgated text has been reinserted.

4B Section 9878(g) Participant Fees

Comment 4B: The commenter states that there is no mention in the list of additional services of a Leave of Absence (LOA). She states that an LOA is quite common and takes considerable staff hours to process and track. The commenter stated that Leave of Absence should be reinserted in the list of additional charges.

Response: The Department agrees with this comment to include "Leave of Absence" as an approved additional fee.

Accommodation: The proposed text is amended to include "Leave of Absence."

4C Section 9878(i) and (i)(1) Participant Fees

Comment 4C: The commenter states that the Department eliminated the language "and any additional fees assessed," and only mentions "program fees." The commenter stated that ancillary fees are not considered program fees and if the program may not withhold a certificate of completion even when additional fees are outstanding, then many programs will be unable to collect or recoup the

ancillary fees incurred by the participants, which will be detrimental to the financial stability of the program.

Response: The Department agrees with the commenter that the text language: “additional fees assessed” should be reinserted into this subsection of the regulation.

Accommodation: This phrase has been reinserted into the proposed text, along with some additional non-substantive amendments.

4D Section 9879 (i)(5) Financial Assessment

Comment 4D: The commenter questions why the Department added language that makes a distinction between someone who has been issued a DL107 and one who has not, and questions the necessity of this distinction. The commenter indicates that this limits the program’s options as to whether to continue the suspension for a maximum of 30 days or dismiss the participant.

Response: The Department agrees with this comment that the amendments to this subsection are confusing and require modification.

Accommodation: The proposed text is amended.

4E Section 9884(a) Interprogram Transfer

Comment 4E: The commenter proposes a language change regarding the commencement of services when a participant transfers to a new program. The suggested language is “enroll within 21 days from the date of transfer.” In addition, the commenter believes that it would make a transfer much smoother if the participant is allowed to enroll within 21 days of the date of transfer and then commence services within 21 days from the date of enrollment. It may create a hardship for the participant moving from one county to another, to get enrolled and begin services all within 21 days.

Response: The Department does not agree since participants are required by Section 9886(a)(5) to attend a scheduled program activity no more than 21 days from their last activity. This is the concept behind the requirement that a transfer participant begin an activity within 21 days after enrollment.

Accommodation: None.

4F Section 9886(a)(5) Dismissal of Participants

Comment 4F: The commenter would like the regulations to include specific guidelines regarding dismissals for attendance violations during the re-entry period of a multiple offender program.

Response: The Department does not agree with this comment because the nature of services provided during this period are monitoring services and there is a certain flexibility for attendance.

Accommodation: None.

COMMENTS No. 5

5A Section 9874(c)(2)(1) Program Sobriety

Comment 5A: The telephone number listed in this section of the regulation is disconnected and the Manual referred to is no longer available in print.

Response: The telephone number and access to the Manual were in effect at the time these regulations were originally drafted. The Department updated this information.

Accommodation: The Department revised this subsection for clarity and accuracy.

5B Section 9874(d)(1)(B) Program Sobriety

Comment 5B: Referring to a drug screening test being conducted with 24 hours, the commenter states that alcohol can be easily metabolized by the body in less than 24 hours unless levels are extremely high. A client could test positive at a clinic at .08 at 10 a.m. and test at .0 24-hours later. The commenter believes that the word “immediately” or “within 2 hours” would be a more fair measure of time allowed for participants to obtain an independent drug screening test.

Response: The Department does not agree since the commenter referred to alcohol’s metabolic rate; however, this section refers to participants that are dismissed for drug use, not alcohol.

Accommodation: None.

5C Section 9878(f)(1) Participant Fees

Comment 5C: The commenter states that allowing the participant to enroll and complete the intake process is costly to the provider, and far exceeds the \$5.00 assessed fee in actual cost incurred by the provider. The intake process requires scheduling an appointment and a Counselor's individual attention. The commenter believes that participants who qualify for a fee waiver should pay substantially more than \$5.00 for their initial intake and orientation fees.

Response: The Department agrees that the \$5 fee for General Relief clients is not sufficient to cover program costs. However, Health and Safety Code sections 11837.3(b) and 11837.4(b)(2) require programs to be accessible to the indigent. For possible consideration in the future, the Department changed the quarterly tracking reports to collect the number of GA clients per program, as currently there is no statewide data to support the request.

Accommodation: The text remains as promulgated.

5D Section 9878 (f)(1)(c) Participant Fees

Comment 5D: The commenter noted that the maximum fee of no more than \$10.00 for reinstatement has been stricken and no replacement text is included. The commenter has a question about how much participants who are on a fee waiver pay for reinstatement. A number of costs are incurred when a participant terminates a program and subsequently reinstates. The \$10.00 fee originally assessed does not cover the costs and asking providers to provide this service at no charge seems grossly unjust.

Response: The Department agrees with this comment that the text regarding the current participant fees should remain as currently promulgated since these fees are necessary for programs to receive partial reimbursement for services rendered during the reinstatement process. The Department does not agree that all participants, including minimum fee participants, should pay the same amount in additional fees.

Accommodation: The proposed text is modified.

5E Section 9878(g) Participant Fees

Comment 5E: The commenter would like the Department to explain "late payment fees."

Response: A late payment is one of the additional fees listed in Section 9878(g). A late payment fee is a fee that may be charged to the participant for missing a scheduled payment and may be defined in the contract documents in each program.

Accommodation: None.

5F Section 9886(b) Dismissal of Participants

Comment 5F: The commenter notes that the words “or fails to reschedule and attend a financial assessment interview in accordance with the provisions of subsection 9879(j)” have been stricken. She noted that it creates a hardship for the provider when a participant requests a financial assessment and fails to provide documentation in a timely manner.

Response: The Department agrees with this comment and will retain the text as currently promulgated.

Accommodation: The former text is reinserted.

COMMENTER No. 6

6A Section 9800(a)(18) Definitions

Comment 6A: The commenter points out that the term “month” is defined as the period of time from a specific date in one calendar month to the corresponding date in the following calendar month. The commenter states that she makes adjustments when there is no corresponding date in the following months or months, but it is not in writing. She mentioned it would help if this was clarified.

Response: After consideration of these comments, the Department believes it is in the public interest not to amend this subsection and that it remains as currently promulgated. The current definition of the word “month” is sufficiently defined.

Accommodation: None.

6B Section 9836(b)(3) Administrative Review of Licensing Actions

Comment 6B: There is a typographical error in the word “licensee.”

Response: The Department agrees with this comment and has also made other non-substantive changes, when necessary.

Accommodation: The Department amended the text.

COMMENTER No. 7

7A Section 9800(a)(30) Definition—Working Days

Comment 7A: The commenter states that the proposed definition of “working days” is practical only if providers have a reliable, current and easily accessible source of information in connection with government furlough days. The commenter requests that a link be provided to a California government web page that is kept current as to furlough closures. This request is based on her program’s difficulty in determining the DMV furlough days.

Response: The Department agrees that the definition should be revised to refer specifically to the Department of Alcohol and Drug Programs only.

Accommodation: The proposed text is amended.

7B Section 9848(d)(D)(1) Participant Enrollment

Comment 7B: The commenter proposes adding in the “additional fee” language that states “program and additional fees, and payment schedule.” The commenter states the reason is that it is unfair not to forewarn clients that in their client contract they might incur possible fees beyond the program fee.

Response: The Department agrees that this language should be included in the participant contract.

Accommodation: The Department has revised the proposed text accordingly.

7C Section 9851(e)(1)(D)(2) Program Services to be Provided

Comment 7C: The commenter suggests adding new language of “approved additional county requirements” into the list of activities during the re-entry phase to allow approved county requirements which occur during re-entry as well as during the core program.

Response: The Department does not agree with this comment. The re-entry period consists of monitoring the participant’s re-entry activity pursuant to Health and Safety Code section 11837.4(b)(1). The promulgated language of the

regulation is consistent with statute. The statute does not allow for additional county requirements during the re-entry period.

Accommodation: None.

7D Section 9851(e)(2)(C) Program Services to be Provided

Comment 7D: The commenter states that under (C) the Department probably meant to state “The licensee shall not allow the participant to begin the community re-entry phase until the participant has completed the core program requirements specified in (e) [not (d)].”

Response: The Department agrees that the current promulgated text indicates (d) instead of (e). The text should be (e).

Accommodation: The Department revised the text.

7E Section 9867(c) Notice of Completion Certificates

Comment 7E: The commenter proposes adding “log retention language” to subsection (c) “The log shall be retained for a minimum of 48 months from the date of issuance of the last certificate in the log.” This is to ensure that as long as client records are required to be retained, to document completion for any further need of a duplicate certificate.

Response: The Department disagrees with this comment. The regulations address the maintenance of program logs but is silent with regard to the retention of these logs. This results in retention of the logs for an indefinite period. The Department has decided to retain the promulgated language.

Accommodation: None.

7F Section 9868(b) Proof of Enrollment Certificates

Comment 7F: This section refers to the log retention language. The commenter proposes adding language to this section that states, “the log shall be retained for a minimum of 48 months from the date of issuance of the last certificate in the log.”

Response: Same as 7E.

Accommodation: None.

7G Section 9878(f)(1)(C) Participant Fees

Comment 7G: The commenter proposes retaining the language in this subsection as currently promulgated which allows the program to charge a participant \$10.00 to reinstate into the program.

Response: The Department agrees with this comment that the text regarding the current participant fees should remain as currently promulgated since these fees are necessary for programs to receive partial reimbursement for services rendered during the reinstatement process.

Accommodation: The promulgated text is reinserted.

7H Section 9878(i) and 9878(i)(1) Participant Fees

Comment 7H: The commenter states the language relating to additional fees has been stricken and proposes the language be retained. The reasoning is that the contracts entered into between the Licensee and the participants allow for a Completion Certificate to be withheld for payment in full of both the program fees and any additional fees assessed. The commenter states that the Licensee should be able to continue to withhold the Completion Certificate to assist them in collection of the fees owed.

Response: The Department agrees with these comments that the completion certificate may be withheld pending payment of all fees.

Accommodation: The text is revised.

**7I Section 9879(i) Financial Assessment to Determine
Participant's Ability to Pay Program Fees**

Comment 7I: The commenter has noticed that the proposed section 9879(i)(1)(B) is inconsistent with the existing section 9879(i) regarding the types of services to be suspended.

Response: The Department shall make these sections consistent regarding the suspension of services.

Accommodation: The text is amended.

COMMENTS No. 8

8A Section 9851(e)(2) Program Services to be Provided

Comment 8A: The commenter states that requirements of self-help meetings have historically brought Legal Aide Advocacy to seek injunction to such language in defense of the participant's rights to certain freedoms of choice. This became costly to the DUI programs and for the Department in legal fees.

Response: The Department does not agree with the comment to eliminate self-help meetings and employment from re-entry activities because these are only examples, not requirements. The regulations do not require self-help activities. The re-entry period consists of monitoring participant's community re-entry activity, whatever they may be. This includes monitoring self-help activities and/or employment as set forth in Health and Safety Code section 11837.4(b)(1).

Accommodation: None.

8B Section 9878(a) Participant Fees

Comment 8B: The term "Leave of Absence" should be included in the list of additional services for which the Licensee may charge the participant. In addition, it would make it consistent with Section 9878(f)(1).

Response: The Department agrees with this comment to include "Leave of Absence" as an additional approved fee.

Accommodation: The text is amended to include "Leave of Absence."

8C Section 9886(a)(6) Dismissal of Participants

Comment 8C: The commenter suggests deleting the language in Section 9886(a)(6) in its entirety. The reasoning is that eliminating this requirement for returning participants to court based on a specific number of absences has resulted in a revolving door in the court system with a 40% to 50% drop out rate.

Response: This proposed regulation section was amended for clarity. After consideration of these comments, the Department believes it is in the public interest not to amend these subsections further. The Department believes that unlimited absences would result in such sporadic attendance that the participant may not retain the information.

Accommodation: None.

COMMENTER No. 9

9A Section 9800(a)(8) Definitions DUI Treatment Services

Comment 9A: The commenter requests that the Department insert new and more detailed language to define DUI Treatment Services in order to provide a clear definition of the level and scope of services provided to individuals enrolled in DUI program services.

Response: The Department disagrees with modifying the definition of DUI programs maintaining that the current regulations adequately address the role and requirements of the DUI programs at this time.

Accommodation: None.

9B Section 9800(a)(14) Definition First Offender

Comment 9B: The commenter requests that the words “or 9 months” be inserted in this definition for consistency with Health and Safety Code section 11837(c) because nine-month programs are actively being ordered by the court.

Response: The Department agrees with this comment. However, the revisions will be different than those suggested by the commenter in order to be consistent with Health and Safety Code section 11837(c) and current practices.

Accommodation: The Department amended the text at 9800(a)(13).

9C Section 9800(a)(23) Definition Program Fee

Comment 9C: The commenter requests that an additional sentence be added to the existing, “all approved additional fees (such as a return-to court; missed activity or make-up, drug testing fees, etc.)” to clarify that the definition of “fees” includes all approved additional fees.

Response: After consideration of these comments, the Department does not agree. Program fees, as defined in Section 9800(a)(22), are fees charged to participants for required program services. Approved additional fees are defined in Section 9800(a)(1).

Accommodation: None.

9D Section 9800(a)(24) Definitions Program Services

Comment 9D: The commenter requests that the Department add “county requirements, and approved additional services” to the existing definition.

Response: After consideration of these comments, the Department believes it is in the public interest not to amend this subsection and that it remains as currently promulgated.

Accommodation: None.

9E Section 9800(a)(28)(B) Definitions Standardized Payment Schedule

Comment 9E: The commenter requests that Section 9800(a)(27)(B) be modified to reflect \$20 instead of \$5 as the maximum fee for a participant who qualifies for a reduced fee program. This is requested to offset the substantially increased economic burden imposed on DUI treatment programs since there was an exponential increase in General Relief clients since September 2008.

Response: The Department agrees that the \$5 fee for General Relief clients is not sufficient to cover program costs. However, the statute requires programs to be accessible to the indigent. The Department has changed the quarterly tracking reports to collect the number of GA clients per program to collect data on this anecdotal change. Currently there is no statewide data to support this request.

Accommodation: The text remains as promulgated.

9F Section 9800(a)(31) Definitions Working Days

Comment 9F: The commenter requests that the Department change “all state agencies are” to “the Department” when defining “Working Days.” The reason is that other state agencies may have different working days.

Response: The Department agrees with this comment.

Accommodation: The Department revised this definition.

9G Section 9801.5(a)(1) County Responsibilities

Comment 9G: The commenter suggests that the words, “in compliance with Section 9805” be inserted in (a)(1) of this Section to reiterate the necessity for the County to follow the criteria listed in section 9805. In addition, the commenter suggested that the county board of supervisors should include evidence used to determine the need for a new DUI program and the evidence that the new program will not jeopardize the fiscal integrity of the existing programs.

Response: The Department agrees with the first portion of this comment, and will insert a reference to Section 9805 in this subsection. However, the Department disagrees with the comment recommending the additional language specifying documentation to be provided by the county when recommending licensure. Section 9805(a)(1) specifies the documentation to be provided to the Department and the criteria to be used when the board of supervisors recommends a program for licensure.

Accommodation: The text is partially amended making reference to Section 9805.

9H Section 9801.5(b)(9) County Responsibilities

Comment 9H: The commenter requests that the Department add (11) to Section 9801.5(b) which would state: (11)“Establish a referral and tracking system for DUI participants.”

Response: The Department does not agree with this comment. Section 9801.5(b)(9) already requires the county to develop a court referral system.

Accommodation: None.

9I Section 9812(a) State Review and Approval

Comment 9I: The commenter suggests adding the words “and Section 9805” to Section 9812(a).

Response: The Department agrees with this comment.

Accommodation: The Department inserted this addition to the text.

9J Section 9812(b) State Review and Approval

Comment 9J: The commenter suggests deleting all of Section 9812(b) and states that counties no longer make these recommendations.

Response: The Department does not agree with this comment as it would conflict with the authority granted to the county board of supervisors through Health and Safety Code section 11836.

Accommodation: None.

9K Section 9812(d) State Review and Approval

Comment 9K: The commenter requests that the language in Section 9812(d) be modified indicating that the Department will determine if an application for a DUI program complies with all regulations, rather than based on documentation submitted by the county board of supervisors.

Response: After consideration of this comment, the Department disagrees with the comment as it believes that the determination of a need for a new program is accomplished best at the local level.

Accommodation: None.

9L Section 9816(a)(1) Approval/Denial of Licensure

Comment 9L: The commenter requests adding the word “working” to 14 days in (a)(1). In addition, the commenter requests that an additional sentence be added to (a)(1) stating, “In counties where DUI services are provided directly by the county no advance notice of any on-site licensure review will be provided.”

Response: The Department does not agree with this comment. The Department believes that providing notice to county run programs will not result in an unfair advantage and is actually a courtesy to the county administrators.

Accommodation: The term “working day” has been added to this section.

9M Section 9816(b)(c) Approval/Denial of Licensure

Comment 9M: The commenter requests that the Department add the word “working” to 15 days in subsections (b) and (c) instead of “days.”

Response: The Department agrees with this comment, as it believes that calendar days are sufficient to provide notice for all parties.

Accommodation: None.

9N Section 9820(b) Extension of Period of Licensure

Comment 9N: Commenter suggests adding the modifier “working” to 120 days in subsection (b).

Response: After consideration of this comment, the Department believes it is in the public interest not to amend this subsection and that they remain as currently promulgated. The Department maintains that 120 (calendar) days provides sufficient notice to the licensee.

Accommodation: None.

9O Section 9822 Program Licensing Fees

Comment 9O: The commenter requests the Department to add subsection (f) to Section 9822, stating that “The Department shall be required to use DUI licensing fees for DUI program activities only,” and add subsection (g) to Section 9822 stating that, “The Department, including the DUI Program Branch, shall be required annually to report its DUI program associated income and expenses, and the fee calculations used in establishing annual fees, to the Legislature and DUI programs and any other interested party requesting such information.

Response: After consideration of these comments, the Department believes it is in the public interest not to amend this subsection and that they remain as currently promulgated. The Departmental use of fees, reporting requirements, DUI trust fund, and provider access to the reports are adequately set forth in Health and Safety Code section 11837.5.

Accommodation: None.

9P Section 9829(c)(1) and (d)(3) Unlicensed Programs

Comment 9P: The commenter requests the Department to delete subsections (c) (1) and (2) and renumber subsection (c) (3) to (c) (1).

In addition, the commenter requests that subsection (d) be revised to state, “Program participants enrolled in an unlicensed program [sic] shall not be given credit for participation and/or completion of required DUI program services and be referred back to the court of jurisdiction for reassignment to a licensed program.”

The commenter is suggesting that the current language may be interpreted to suggest that an unlicensed program may be allowed to operate during the

application process and thereby circumventing the determination of the need for a new program that is done during the application process. The commenter states that an unlicensed program must be required to cease operations immediately with all applicable sanctions being enforced.

Response: The Department agrees with these comments.

Accommodation: The Department amended the text; however, the revisions will be different than the proposed suggested changes.

9Q Section 9846(b)(1) and (b)(2) Staff Qualifications and Function

Comment 9Q: The commenter requests that the proposed change to subsection (b)(1) be withdrawn and the current regulations remain, i.e. Program staff who conduct: Educational sessions shall have a minimum of two years of experience in providing drug education and information to persons with alcohol and/or other drug problems in a classroom setting. The commenter also suggests deleting the entire paragraph under subsection (b)(2) as the language is inconsistent with other portions, that is 9 CCR §13005 titled Counselor Certification.

Response: The Department agrees with this comment. After further review of this text and of this comment, the Department has decided not to change the minimum requirements from two years to one year. The Department will also add a sentence to this subsection that will accommodate programs to allow counselors to conduct educational sessions based on their certification status.

Accommodation: The proposed text is amended.

9R Section 9846(f) and (g) Staff Qualifications and Function

Comment 9R: The commenter requests that subsection (f) be modified to “one year of experience in providing counseling services . . . instead of the proposed “two” years. The commenter states that two years is inconsistent with and exceeds the requirements for alcohol and drug counselors specified in the Counselor Certification regulations. Further, the commenter suggests that (g) be modified to state that “a year of experience” means 2080 hours, not 1776 hours, thereby making this subsection consistent with section 13040(c) of title 9 regulations.

Response: The Department agrees with these comments.

Accommodation: The Department amended the text.

9S Section 9848(c) Participant Enrollment

Comment 9S: The commenter suggests that the Department add additional language at the end of subsection (c) which states, “in counties where a court referral and tracking system is being utilized by the court.” This request is also consistent with the commenter’s request for the establishment of a tracking system in Section 9801.5.

Response: After consideration of this comment, the Department believes it is in the public interest not to amend this subsection and that it remains as currently promulgated. The suggested language would also conflict with Sections 9801.5(6)(9) and Health and Safety Code section 11837.2.

Accommodation: None

9T Section 9849(e) Assessment of Participant’s Alcohol or Drug Problem

Comment 9T: The commenter suggests the words “participant and the” be deleted in this section stating that the counselor should thoroughly discuss the results of the assessment but the requirement of the participant to sign the assessment should be deleted to prevent misinterpretation of the counselor’s written comments.

Response: The Department does not agree with this comment. It is unclear why there would be a misinterpretation of the counselor’s written comments. The Department maintains that a participant signature is necessary in order to verify that the participant acknowledges that the assessment has been explained by the program counselor.

Accommodation: None

9U Section 9851(d)(3) Program Services to be Provided

Comment 9U: The commenter requests that the words, “at the end of” be stricken in subsection (d)(3). The commenter states it is because the current language leaves a gap.

Response: The Department agrees with this comment as it will allow for more program flexibility.

Accommodation: The Department will amend the text in order to clarify that the participant's exit interview is included as one of the five interviews.

9V Section 9851(e)(1)(C) and (f)(1)(C) Program Services to be Provided

Comment 9V: The commenter suggests replacing the word "or" with "and" in both subsections (e)(1)(C) and (f)(1)(C) to ensure and clarify that face-to-face interviews are to be provided until education and group counseling sessions have been completed.

Response: The Department agrees with this comment.

Accommodation: The Department will amend the text. The revisions are different from those recommended by the commenter in order to provide more clarity.

9W Section 9851(f)(1)(D) Program Services to be Provided

Comment 9W: The commenter suggests rewording this subsection as it relates to community service hours in order to clarify the procedure in which community service hours are completed.

Response: The Department agrees with this comment.

Accommodation: The Department has amended the text and for clarity the revisions will refer to the corresponding statute.

9X Section 9851(f)(1)(D)(1) Program Services to be Provided

Comment 9X: The commenter suggests that subsections (f)(1)(D)(1) and (D)(4) should be deleted as the language is non operational because there is a lack of opportunities of this type existing in many counties.

Response: The Department does not agree with this comment. These requirements are set forth by statute.

Accommodation: None.

9Y Section 9852(b) Educational Sessions

Comment 9Y: The commenter suggests that Section 9852(b) refer to 9846(b)(1) instead of 9846(c), because it will allow staff who are certified counselors, but lack two years experience, to provide educational sessions.

Response: The Department agrees with this comment.

Accommodation: The text is amended.

9Z Section 9852(h) Educational Sessions

Comment 9Z: The commenter suggests that Section 9852(h) be stricken in its entirety. The reasoning is that this requirement is non operational. It does not work with first offender participants. If the participant misses an educational session, he/she must be rescheduled for a make-up session within a 21 day period and there is a high probability the participant will be involved in a repeat session.

Response: The Department agrees with this comment. It does not provide enough program flexibility for participants to complete the DUI program during the court mandated timeframe.

Accommodation: The Department will remove this portion of the text and re-letter the subsequent subsections.

9AA Section 9852(i) Educational Sessions

Comment 9AA: The commenter suggests striking the word “counselor” and replacing it with the word “instructor” to be present during an entire educational session. This would make this subsection consistent with the definitions and allow instructors rather than certified counselors to provide educational sessions.

Response: The Department agrees with this comment.

Accommodation: The Department amended the text. The subsection now begins with (g).

9BB Section 9852(j)(1) Educational Sessions

Comment 9BB: The commenter suggests using the word “or” instead of “and” in determining the family members and friends who voluntarily may attend educational sessions.

Response: The Department agrees that this subsection requires clarity.

Accommodation: The Department will revise this subsection but not in the same manner suggested by this comment.

9CC Section 9862(a) Referral to Ancillary Services

Comment 9CC: The commenter suggests adding the words “but not limited to” when referring to ancillary services listed in this subsection.

Response: The Department does not agree with this comment. The proposed amendment does not limit referrals to the services listed; therefore, there is no necessity for additional language to express this flexibility.

Accommodation: None.

9DD Section 9862(b) Referral to Ancillary Services

Comment 9DD: The commenter suggests adding the words “unless the participant’s behavior represents a health and safety risk or the participant is unable to benefit from DUI services because of his/her behavior,” in connection with voluntary referrals in this subsection.

Response: The Department does not agree with this comment. The recommended language is inconsistent with a voluntary referral.

Accommodation: None.

9EE Section 9867(3) Notice of Completion Certificates

Comment 9EE: The commenter suggests adding the language, “or provide a receipt to the participant” to this subsection.

Response: The Department disagrees with this comment. Programs can print a copy of the Notice of Completion certificate when issued. Additionally, programs have access to issued Notices of Completion certificates through the DMV database. The program may also obtain a copy from the participant record, as a copy must be retained in the participant file pursuant to section 9867(g)(4).

Accommodation: None.

9FF Section 9867(p) Notice of Completion Certificates

Comment FF: The commenter suggests adding the language “on the day following the discovery of missing certificates.” This will provide a realistic

timeframe to provide the required notification. In addition, the commenter suggests retaining the penalty language for missing certificates to a \$5,000 maximum fine for a calendar year and requests the Department not modify this amount.

Response: The department agrees with the commenter that the current amendment may result in undue hardship to the program by not allowing the program sufficient time to locate a missing certificate. The department agrees that the fine shall not exceed \$5,000. However, the department does not agree to limit the fine to this amount per calendar year, as the yearly limit will not properly discourage the selling of certificates.

Accommodation: The Department amended the text. However, the revisions are different than those suggested by the commenter.

9GG Section 9867(p)(1) Notice of Completion Certificates

Comment 9GG: The commenter suggests inserting the word “date” instead of “last day,” to this subsection for clarification purposes.

Response: The Department agrees with this comment for clarity.

Accommodation: The Department amended this text.

9HH Section 9868 (b) Proof of Enrollment Certificates

Comment 9HH: (1) The commenter suggests rewording the language in connection with typed program logs and electronic format. (2) The commenter also suggests replacing the words “[N]otice of Completion Certificate. . .” with the words “Proof of Enrollment Certificate.”

Response: The Department agrees with this comment and that this subsection should be consistent with Section 9867(c) and accurately reflect the type of certificate.

Accommodation: The Department amended the text. However, the revisions are different than those suggested by the commenter in order to maintain parallel construction with Section 9867(c).

9II Section 9874(c) (2) Program Sobriety

Comment 9II: The commenter suggests adding the phrase, “or by the administering of a Department of Transportation approved test,” in this

subsection which refers to determining if a participant is under the influence of drugs, as this may make it easier for smaller counties who do not have a second staff member available to help determine an immediate case of sobriety of a participant.

Response: The Department agrees with this comment, however, the revision of the text is different than suggested.

Accommodation: The Department has amended the text for clarity.

9JJ Section 9878(f)(1) (B) Participant Fees

Comment 9JJ: The commenter suggested amending the fee from \$5.00 to \$20.00 in this subsection.

Response: Please see the Department's response to 5C.

Accommodation: None.

9KK Section 9878(f)(1) (C) and Participant Fees

Comment 9KK: The commenter suggested retaining the \$10.00 reinstatement fee for participants who qualify for the \$5.00 program fee. The logic is that since the downturn of the economy in September 2008, there are many more individuals enrolling in DUI treatment programs who qualify under General Relief status. The commenter states that some programs have had a 150 to 250% increase in the numbers of General Relief program participants.

Response: The Department agrees with this comment.

Accommodation: The text remains as promulgated.

9LL Section 9878(g) Participant Fees

Comment 9LL: The commenter suggested amending the fee from \$5.00 to \$20.00 in this subsection, remaining consistent with other changes requested. Also in this subsection, the commenter requests that the term "Leave of Absence" be included in the list of services.

Response: The Department partially agrees with this comment. Please see responses to comment 4B and 5C.

Accommodation: The Department will insert text relating to "Leave of Absence."

9MM Section 9878(i) Participant Fees

Comment 9MM: The commenter suggests modifying this subsection in the first sentence to say that the program “shall” withhold the certificate, instead of the proposed text which states, the program “may” withhold. The Department has stricken the language “and any additional fees assessed have been” and the commenter requests that it be reinstated by stating “all additional fees assessed have been” paid in full.

Similarly in subsection (l), the commenter suggests reinstating the phrase, “and all additional fees assessed.”

Response: The Department partially agrees with these comments. The Department does not agree that the DUI programs “shall” withhold completion certificates for non-payment, as it believes in allowing programs and participants some flexibility for extenuating circumstances.

Accommodation: The Department amended the text.

9NN Section 9879(e) and (e)(1) Financial Assessment

Comment 9NN: The commenter suggests prepositional changes in this sentence, and adding another number to the list titled “Total Household Income.”

Response: After consideration of the comment, the Department believes it is in the public interest not to amend this subsection and that it remains as currently promulgated. The suggested language is too broad and may disqualify legitimate indigent participants.

Accommodation: None.

9OO Section 9879(j)(1)(2) Financial Assessment

Comment 9OO: The commenter suggested in (j)(1) and in (j)(2) modifying the dollar amount to \$20.00 instead of the proposed \$5.00, which is consistent with the changes requested in section 9878.

Response: Please see the Department’s response to 5C.

Accommodation: None.

9PP Section 9886(6) Dismissal of Participants

Comment 9PP: The commenter suggests eliminating number (6) in its entirety. The commenter states that eliminating the requirement for returning participants to court based on a specific number of absences has resulted in a revolving door within the court system. There is a 40% to 50% drop out rate of participants who continue to drive without a license and without insurance.

Response: The Department does not agree with this comment. The change made to this subsection was to improve clarity rather than to change the requirements. After consideration of this comment, the Department believes it is in the public interest not to amend this subsection and that it remains as currently promulgated. Please see response to 8C above.

Accommodation: None.

9QQ Section 9886(f) Dismissal of Participants

Comment 9QQ: The commenter suggests that the Department use “2 years” as the length of time the Licensee may credit the participant for services. The commenter also states that, “Allowing a participant who has been dismissed from the program and fails to re-enroll for a period of two (2) years is clinically inappropriate from a counseling perspective and is enabling the participant to not take the requirement of completing his/her court ordered program seriously.”

Response: The changes proposed by this commenter are identical to the current proposed amended text.

Accommodation: None.

COMMENTS No. 10

10A Section 9851 (e)(2) (D)(2) Program Services to be Provided

Comment 10A: The commenter requests the Department insert the language, “or face-to-face interviews” as an option to “group counseling” inserted by the Department. The commenter believes the Department must allow face-to-face interviews as a treatment option and it will result in decreased attendance violations because it allows the continuity of structured treatment, improves the licensee’s ability to monitor self-help meetings, employment, and other areas of self improvement.

Response: The Department disagrees with this comment. However, the Department will revise the text to comport with the statutory language.

Accommodation: The Department amended the text. The amendment is different than suggested by the commenter.

10B Section 9851(e)(2)(A) Program Services to be Provided

Comment 10B: The commenter again stated that “face-to-face interviews” should be included in this portion of the text as another option besides group counseling because group counseling sessions are designed for peer level discussions, whereas, the personal goals, barriers, and other areas of self-improvement need to be managed on a participant-to-counselor level to be effective.

Response: The Department disagrees with this comment. The term “group counseling” is deleted from the proposed text. The Department maintains that the remaining portion of this subsection is sufficient without face-to-face interview language included.

Accommodation: None.

10C Section 9851 (D)(1) Program Services to be Provided

Comment 10C: The commenter suggests that the language in this subsection requires the community service to be directly related to the prevention of driving under the influence and the promotion of safe driving. The commenter contends that this is not doable. Instead, the commenter suggests the community service should be identified as general community improvement with the goal of prevention of DUI measurable outcomes. The commenter states that it is imperative that the participant “earn” the trust and respect of the community that they put at risk, so becoming of service at a selected non profit community provider will be rewarding to both the participant and the community.

Response: The Department disagrees with this comment. It is not necessary to revise the language in this subsection as it conforms to Health and Safety Code section 11837.4(b)(3).

Accommodation: None.

10D Section 9851 ~~(f)(1)(E)(3)~~ (f)(1)(D)1. Program Services to be Provided

Comment 10D: The commenter suggests removing the language “unless prohibited by the court,” and replacing with text indicating the licensee “may” make provisions for a participant to voluntarily enter a licensed chemical dependency recovery hospital. The commenter states that any appropriate treatment deemed necessary should be considered by the counselor and the participant.

Response: The Department disagrees with this comment. The proposed text conforms with language of Health and Safety Code section 11837.4(b)(3).

Accommodation: None.

10E Section 9852(g) Educational Sessions

Comment 10E: The commenter believes that pursuant to personal experience, the text related to educational films should include the words “pertinent film” to be used with “the Department’s approval.”

Response: The Department agrees with this comment since section 9852(c) adequately addresses the content of educational sessions.

Accommodation: The Department deleted the proposed text in section 9852(g).

10F Section 9852(h) Educational Sessions

Comment 10F: The commenter states that the text in this subsection does not allow for repetition of a topic or session number and will result in scheduling dilemmas for the providers, so that clients can complete the program timely and not impact the court system. The commenter states that real education is based on repetition and the format and educational presentation is the didactic Socratic model.

Response: The Department agrees with this comment. It does not provide enough program flexibility for participants to complete the DUI program during the court mandated timeframe.

Accommodation: The Department deleted the proposed text in section 9852(h).

**10G Section 9867(d) (1)-(4) & (e) & (f) and Section 9867(h)(4)(I) and
Section 9867 (h)(4)(m)(1)(A) and (1)(B) and (2)
Notice of Completion Certificates**

Comment 10G: The commenter suggests several portions of these subsections listed above should be deleted relating to filing electronically and other references to the maintenance of the Notice of Completion Certificates.

Response: The Department does not agree with this comment. There is no requirement that programs issue certificates in electronic format. Additionally, the existence of unused certificates makes it necessary to retain all these sections regarding voiding and purchasing of certificates.

Accommodation: None.

**10H Section 9868(e)(A) & (B)(2) & (2)(B)(1-10) & (3) & (4)(f) & (h) &
(I) & (1)(A) & (B)(2) & (m)
Proof of Enrollment Certificates**

Comment 10H: Again, the commenter states the sections listed above are obsolete because all providers should be required to file electronically.

Response: The Department disagrees with this comment. See the Department's response to 10G.

Accommodation: None.

10 I Section 9874(e) Program Sobriety

Comment 10I: The commenter states that the programs need to treat the disease of addiction and they need to address this behavior as a health problem, not a legal problem. If the system mandates that providers be certified AOD Counselors, then the system must allow for treatment professionals to do their job. Providers should not miss the opportunity to intervene whether it is misuse, abuse or addiction. The commenter stated it is the licensee's ethical responsibility to treat and manage addiction as a health problem. The commenter also stated that participants who refuse enhanced treatment should be dismissed to the Court and that such a violation should be reported to DMV for the purposes of public safety.

Response: The Department does not agree with this comment. The failure to maintain program sobriety, which can be based on only .01 amount of alcohol in the system, is a rule violation. Failure to maintain program sobriety, in addition to being inconsistent with program services, may also result in disruption of

educational and group sessions. Program sobriety requirements do not preclude DUI Programs from recommending ancillary services to participants as stated in Section 9862.

Accommodation: None.

10 J Section 9886 (a)(2) Dismissal of Participants

Comment 10J: The commenter reiterates that the programs cannot afford to miss the opportunity to intervene whether it is misuse, abuse or addiction of substance use. The commenter stated that it is the program's ethical responsibility to treat and manage substance abuse as a health problem.

Response: The Department does not agree. Please see the Department's response to 10 I.

Accommodation: None.

COMMENTS No. 11

11 A Section 9846(b)(1) Staff Qualifications

Comment 11A: The commenter states that program staff who conduct educational sessions should have two years of experience instead of the one year suggested in the proposed regulations.

Response: The Department agrees with the comment that two years of experience should be required.

Accommodation: The Department retains the promulgated version of the text.

11 B Section 9846(b)(2) Staff Qualifications

Comment 11B: The commenter proposed the requirement that counselors who conduct assessments have two years of experience.

Response: The Department disagrees with this comment. It maintains that program staff who conduct the assessment should meet the counseling certification requirements.

Accommodation: None.

11 C §13035 Certifying Organizations

Comment 11C: The commenter suggests revising the language in 9 CCR § 13035 to require certification for staff who conduct educational sessions.

Response: This comment is outside the scope of the proposed regulatory amendments.

Accommodation: None.

11 D Section 9846(d) Staff Qualifications

Comment 11D: The commenter suggests revising the subsections in staff qualifications to indicate that staff who conduct counseling and educational sessions comply with the code of conduct pursuant to Section 13060.

Response: Section 9846(d) of the current regulations already imposes the requirement that staff comply with the code of conduct pursuant to Section 13060 which is developed by the organization by which they were certified or registered. Educational staff are not required to be certified or registered.

Accommodation: None.

11E Section 9846(f)(1) Staff Qualifications

Comment 11E: The commenter proposes adding language to specify that this section refers to DUI program staff and interns.

Response: The Department maintains the current regulatory language is sufficient to ensure this section is limited to DUI program staff requirements.

Accommodation: None

11 F Section 9848(d)(1) Participant Enrollment

Comment 11F: The commenter suggests that this subsection contain attendance requirements, leave of absence provisions, provisions for dismissal, financial assessment interview process regarding the fee waiver requirement and the extended fee. The commenter also suggests that the scheduling of program services be defined.

Response: The Department agrees with this comment

Accommodation: The regulatory text is amended.

11 G Section 9848(d)(2)(B)(C) Participant Enrollment

Comment 11G: The commenter states that the scheduling of program services should be defined.

Response: The Department believes the proposed amendments to this section of the regulation adequately set forth the requirements and provides flexibility to allow for adjustments to the schedule.

Accommodation: None.

11 H Section 9848(e) Participant Enrollment

Comment 11H: The commenter suggested that all signatory documents be available in the language of the client.

Response: The Department already provides in subsection (e) of this section that the licensee shall provide all documents that require a participant signature to be in all languages in which the licensee provides services, and these documents are all signatory documents.

Accommodation: None.

11 I Section 9849 Assessment of Participant's Alcohol and Drug Program

Comment 11I: The commenter suggests that this subsection is inconsistent with regards to the qualifications of staff who conduct assessments, i.e. counselors.

Response: The Department disagrees that there is inconsistency in the requirement that program staff who conduct assessments meet the requirements of section 9846(c).

Accommodation: None.

11 J Section 9851(a)(b) Program Services to be Provided

Comment 11J: This subsection identifies the number of educational and/or counseling sessions and the number of hours of each session that the provider

makes available to the client. The commenter states that in her experience some providers structure their programs based on the most cost effective manner for their program, not the “best practices” approach for the offender. In the commenter’s estimation, if the Department defines DUI programs as educational programs, then more educational sessions should be required. If ADP defines DUI programs as treatment programs, then more counseling programs should be required.

Response: The Department disagrees with this comment. The Department maintains that program requirements adequately allow for flexibility and any adjustments to be determined at the county level.

Accommodation: None.

11 K Section 9851 (e)(2) Program Services to be Provided

Comment 11K: The commenter suggests that ADP consider specifying that re-entry sessions shall be limited to either individual face-to-face contacts or group counseling sessions. Since this is only a one hour session, ADP should be specific.

Response: The Department does not agree that re-entry sessions should be limited to either group counseling or face-to-face interviews. It believes that the flexibility of the re-entry process is consistent with Health and Safety Code section 11837.4. However, the text as proposed has been slightly amended again to comport with statutory language.

Accommodation: The text is amended.

11L Section 9852 Educational Sessions

Comment 11L: The commenter states that the Department previously issued a bulletin to the programs which gave them discretion to allow participants full credit for only partial attendance at a session. This was in the event of inclement weather conditions preventing the participant from attending the full hour of the session. The commenter would like the Department to add this concept to this portion of the regulatory text.

Response: The Department disagrees with this comment. In order to obtain credit for attending a program activity, the entire activity must be attended. The Department maintains it is in the public’s best interest that participants do not receive credit for services they did not fully attend.

Accommodation: None.

11 M Section 9876(3) Participant Attendance

Comment 11M: The six-month program has been deleted from the regulations. To be consistent, it should be deleted here as well.

Response: The Department disagrees with this comment. It is still common practice for participants to be ordered into six-month programs.

Accommodation: None.

11 N Section 9878(a) Participant Fees

Comment 11N: This section defines “participant” as those clients who are enrolling or are in the process of enrolling. The commenter suggests that ADP define those participants who are in the process of enrolling as “potential participants.” In this way, it would cover clients who are referred back to the court or required by DMV to attend and complete the program.

Response: The Department agrees with this comment, however, section 9878(d) already defines participant in the manner suggested.

Accommodation: None.

11 O Section 9884 Interprogram Transfer

Comment 11O: The commenter states that the County Administrator does not ever approve a transfer and that this section should be removed. In addition, the commenter suggests beginning the sentence with “If required by the court” as some courts do not want the notice of transfer.

Response: This requirement was already removed in the proposed amended regulatory text. The Department agrees with a revision to clarify transfer notification to the court.

Accommodation: The Department revised the text.

11 P Section 9886(d) Dismissal of Participants

Comment 11P: The commenter suggests updating the regulations to require a written policy on reinstatement, as it is not contained in the participant contract.

Response: The Department does not agree with this comment as the programs reinstatement policy falls under “program rules”. Program rules are already listed in Section 98489d)(1)(D) of these regulations.

Accommodation: The Department amended the text accordingly.

15-DAY COMMENTS AND RESPONSES

The Public Comment period on the proposed text was open for public comment for 15 days from July 21, 2011 through August 5, 2011. The Department received three comment letters, e-mails and faxes. A summary of these comments and the Department responses are as follows:

COMMENTS No. 1

1A: Section 9867(g) Notice of Completion Certificates

Comment 1A: The commenter states that for large programs open seven days a week the ten day issuance period allowed for completion certificates is difficult to meet. The commenter requests that the language be changed to 14 days.

Response: The Department believes that ten days is sufficient time for a program to issue a completion certificate and that extending this requirement to 14 days would result in inflicting an undue hardship on the participants.

Accommodation: None

COMMENTS No. 2:

2A: Section 9867(g) Notice of Completion Certificates

Comment 2A: This commenter repeats Comment number 1.

Response: Same as Response to Comment #1.

Accommodation: None

COMMENTS No. 3

3A: Section 9800(a)(22) Program fee

Comment 3A: The commenter points out a non substantial item, i.e. that Article 2 should be changed to Article 3, and Subchapter 3 should be changed to Subchapter 4 in the Program Fee section of the regulations. The commenter also requested “all approved fees” should be added to the definition of program fee.

Response: The Department does not agree. The Department would like to keep a distinction between program fees and additional fees. The definition of program fee includes a reference to Section 9848, which is in Article 2. The additional approved fees are listed in Section 9878.

Accommodation: None.

3B: Section 9899(a)(23)

Comment 3B: The commenter would like the Department to add “alcohol and/or drug outpatient treatment” to the definition of program services. The commenter would also like to have the following language added to the definition: “services also include prevention, intervention, and ongoing community resources referrals as needed.”

Response: The Department does not agree that it is necessary to add this language to the text. The Department believes that the current definition appropriately lists all activities that participants are required to attend.

Accommodation: None.

3C: Section 9846(b)(1)

Comment 3C: The commenter states that the revisions to this section of the text are confusing and that she believes the Department intends to state “two” years in this section.

Response: The commenter is correct. Originally, the proposed text indicated that two years was changed to one year regarding the number of years of experience for educational sessions. After the 45-day comment period, the Department reversed the one year back to two years.

Accommodation: None.

3D: Section 9851(b)(4)

Comment 3D: The commenter would like to add language that would require three-month program participants to attend more than three face-to-face interviews, if the participant failed to complete all program activities and pay all fees prior to the last scheduled face-to-face interview.

Response: The Department does not agree that the recommended change is necessary. For participants who are delinquent in payment of fees, the programs may place the participant on suspension or withhold the Notice of Completion for participants who have completed all scheduled activities. Additionally, this text permits programs to schedule additional face-to-face activities. (at no charge to the participant)

Accommodation: None.

3E Section 9851(e)(2)

Comment 3E: The commenter would like to modify the language of this section to include “activities that promote abstinence” and “self-improvement including employment” while deleting some of the promulgated and proposed text.

Response: The Department does not agree because the modifications suggested are inconsistent with the requirements set forth in Health and Safety Code section 11837.4(b)(1).

Accommodation: None.

3F Section 9851(e)(1)(c)

Comment 3F: The commenter would like to modify the language of this section to require face-to-face interviews for 18 month participants to begin within 21 days of enrollment to be consistent with Section 9848(i), which requires the licensee to begin providing services within 21 days of enrollment.

Response: The Department does not agree that a modification is necessary. The regulation as promulgated, which requires “every other week” face-to-face interviews to begin immediately, results in compliance with Section 9848(i).

Accommodation: None.

3G Section 9854(g)(3)

Comment 3G: The commenter would like to remove the requirement that DUI programs note in the participant's record the reason a participant was added to the group counseling on an emergency basis. The requirement that this information is noted on the attendance roster would remain. The commenter stated that this is duplication of effort.

Response: The Department does not agree that this modification is necessary because including this information in the participant record allows for access to pertinent information regarding the participant.

Accommodation: None.

3H Section 9862(b)

Comment 3H: The commenter suggests adding language that would allow programs to refer participants to ancillary services on an involuntary basis. These referrals would be limited to participants who present a health and safety risk to staff or other participants.

Response: The Department does not agree that this modification is necessary because Section 9886 permits DUI programs to dismiss those participants who are verbally or physically abusive or act in a threatening manner. The Department maintains that involuntary referrals should remain the responsibilities of the courts.

Accommodation: None.

3 I Section 9878(f)(1)(C)

Comment 3I: The commenter suggests amending the promulgated text by increasing the additional fee for rescheduling participants who are eligible for the \$5.00 monthly payment to \$10.00 each time the participant fails to attend or reschedule a program service in advance.

Response: The Department does not agree with this comment. The Department believes that an increase of this fee, which could be assessed multiple times during an enrollment period, would be an unnecessary burden to an indigent participant. It should be noted, however, that the \$10 charge for reinstating a participant who voluntarily withdrew from the program or who had been dismissed from the program remains in the text as promulgated.

Accommodation: None.

3J Section 9878(f)(1)(C)

Comment 3J: The commenter also stated that those who voluntarily withdraw from the program or who have been dismissed from the program should pay \$10 to be reinstated.

Response: The Department agrees and this text remains the same as promulgated.

Accommodation: None.

The Department of Alcohol and Drug Programs has complied with Government Code section 11345.5(a)(13) by fully considering every alternative to the regulations presented by the public during the public comment periods and has determined that no alternative would be more effective in carrying out the purpose for which the rulemaking action was taken or would be as effective as and less burdensome to affected private persons than the regulatory changes made in the subject rulemaking action.

End